

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:13-CV-897-TDS-LPA**

JAMES DILLON on Behalf of
Himself and All Others Similarly
Situated,

Plaintiffs,

vs.

BMO HARRIS BANK, N.A.,
FOUR OAKS BANK & TRUST
CO., a North Carolina Chartered
Bank, GENERATIONS FEDERAL
CREDIT UNION, and BAY
CITIES BANK, a Florida State-
Chartered Bank,

Defendants.

**DEFENDANT FOUR OAKS BANK &
TRUST CO.'S MOTION TO DISMISS**

Defendant Four Oaks Bank & Trust Company respectfully moves the Court to dismiss Plaintiff's Class Action Complaint pursuant to Rules 12(b)(6), 12(b)(7), and 19 of the Federal Rules of Civil Procedure for (i) failure to join a required party and (ii) failure to state a claim upon which relief can be granted. The arguments and authorities supporting this motion are set forth in the accompanying Memorandum of Law.

This the 23rd day of December, 2013.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, LLP

By: /s/ Clifton L. Brinson

Carl N. Patterson, Jr.

NC Bar No. 7260

Clifton L. Brinson

NC Bar No. 34331

Isaac A. Linnartz

NC Bar No. 39858

150 Fayetteville Street

Suite 2300

Raleigh, NC 27601

Ph.: (919) 821-1220

Fax: (919) 821-6688

cpatterson@smithlaw.com

cbrinson@smithlaw.com

ilinnartz@smithlaw.com

*Attorneys for Defendant Four Oaks Bank &
Trust Co.*

CERTIFICATE OF SERVICE

I certify that on December 23, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such to the following CM/ECF participants:

Norman E. Siegel
Steve Six
J. Austin Moore
Stueve Siegel Hanson LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112
siegel@stuevesiegel.com
six@stuevesiegel.com
moore@stuevesiegel.com
Attorneys for Plaintiffs

Darren T. Kaplan
Chitwood Harley Harnes LLP
1350 Broadway, Suite 908
New York, NY 10018
dkaplan@chitwoodlaw.com
Attorney for Plaintiffs

Hassan A. Zavareei
Tycko & Zavareei LLP
2000 L Street, N.W., Suite 808
202 Washington, DC 20036
hzavareei@tzlegal.com
Attorneys for Plaintiffs

Jeffrey M. Ostrow
Jason H. Alperstein
Kopelowitz Ostrow P.A.
200 S.W. 1st Avenue, Suite 1200
Fort Lauderdale, FL 33301
ostrow@KOlawyers.com
Alperstein@KOlawyers.com
Attorneys for Plaintiffs

F. Hill Allen
Tharrington Smith, LLP
P.O. Box 1151
Raleigh, NC 27602-1151
hallen@tharringtonsmith.com
Attorneys for Plaintiffs

Mary K. Mandeville
Alexander Ricks PLLC
2901 Coltsgate Road, Suite
Charlotte, NC 28211
mary@alexanderricks.com
Attorneys for BMO Harris Bank, N.A.

Lucia Hale
Debra Bogo-Ernst
Mayer Brown, LLP
71 Wacker Drive
Chicago, IL 60606
lnale@mayerbrown.com
dernst@mayerbrown.com
Attorneys for BMO Harris Bank, N.A.

Reid Calwell Adams, Jr.
Womble Carlyle Sandridge & Rice
One West Fourth Street
Winston-Salem, NC 27101
cadams@wcsr.com
*Attorneys for Generations Federal
Credit Union*

Mark Vasco
Alston & Bird LLP
Bank of America Plaza
101 S. Tryon Street, Suite 4000
Charlotte, NC 28280-4000
mark.vasco@bryancave.com
Attorneys for Bay Cities Bank

Respectfully submitted,

/s/ Clifton L. Brinson
Clifton L. Brinson
N.C. State Bar No. 34331
SMITH, ANDERSON, BLOUNT,
DORSETT, MITCHELL & JERNIGAN,
L.L.P.
P.O. Box 2611
Raleigh, North Carolina 27602-2611
Tel: (919) 821-6681
Fax: (919) 821-6800
Email: cbrinson@smithlaw.com
*Attorney for Defendant
Four Oaks Bank & Trust Co.*